

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 CHRISTOPHER D. MANGUM,
8 Plaintiff,

9 -vs-

10 CAROLYN W. COLVIN, Commissioner
11 of Social Security,¹
12 Defendant.

NO. CV-12-0414-WFN

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

13 Before the Court are cross-Motions for Summary Judgment (ECF Nos. 17 and 18).
14 Attorney Maureen J. Rosette represents Plaintiff. Special Assistant United States Attorney
15 Benjamin J. Groebner represents Defendant. The Court has reviewed the administrative
16 record and briefs filed by the parties and is fully informed.

17 **JURISDICTION**

18 Plaintiff protectively applied for disability insurance and supplemental security income
19 benefits on September 29, 2009, alleging disability beginning on July 1, 2008, due to
20 physical and mental impairments. The applications were denied initially and on
21 reconsideration.

22
23 ¹ Carolyn W. Colvin became the Acting Commissioner of Social Security on
24 February 14, 2013. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Carolyn
25 W. Colvin is substituted for Michael J. Astrue as the defendant in this suit. No further action
26 need be taken to continue this suit by reason of the last sentence of 42 U.S.C. § 405(g).

ORDER GRANTING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT - 1

1 A hearing was held before Administrative Law Judge (ALJ) Moira Ausems on
2 December 17, 2010. At the hearing, Plaintiff, represented by counsel, testified as did Thomas
3 A. Polsin, a vocational expert (VE), and Danielle Hoppins, Plaintiff's fiancée. The ALJ
4 concluded that Plaintiff was not disabled. The Appeals Council denied Plaintiff's request for
5 review making the ALJ's decision the final decision of the Commissioner. Pursuant to 42
6 U.S.C. § 405(g), this final decision is appealable to the district court. Plaintiff sought judicial
7 review on June 22, 2012.

8 **FACTS**

9 The facts of the case are set forth in detail in the transcript of the proceedings and are
10 briefly summarized here. Plaintiff was twenty nine years old at the time of the hearing.
11 Plaintiff testified that he dropped out of high school, but completed his GED. (Tr. at 44.)
12 Plaintiff received vocational training as an electrician's helper through Job Corps, but never
13 pursued credentials necessary to employment as an electrician. (Tr. at 44-45.) Plaintiff has
14 worked in a variety of industries including telemarketing (Tr. at 52), fast food restaurants (Tr.
15 at 53), and landscaping and construction (Tr. at 54-55).

16 Plaintiff's life has not been easy. Plaintiff grew up in foster care. (Tr. at 46.) After
17 leaving foster care, Plaintiff was homeless. (Tr. at 46.) Plaintiff has a history of illegal drug
18 use and continues to use marijuana to ease his pain. Plaintiff has at least one felony
19 conviction. (Tr. at 67, 150, 429.) Plaintiff complains of short term memory loss, possibly
20 caused by head injuries. (Tr. at 59-60.) Plaintiff has been fired from several jobs based at
21 in least in part on his volatile temper. (Tr. at 56, 58, 62.) On other occasions, Plaintiff has
22 simply walked off the job because of disagreements with his employers. (Tr. at 62.)

23 Since the alleged onset of Plaintiff's disability, he spends most of his time reading or
24 on his laptop computer—watching shows or browsing the internet—while in a reclined or
25 horizontal position. (Tr. at 68-69.) Plaintiff also has a daughter whom he visits once a week.
26 (Tr. at 69.)

SEQUENTIAL PROCESS

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a), 416.920(a); *see Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987). In steps one through four, the burden of proof rests upon the claimant to establish a prima facie case of entitlement to disability benefits. *Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir. 1999). This burden is met once a claimant establishes that a physical or mental impairment prevents him from engaging in his previous occupation. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the ALJ proceeds to step five, and the burden shifts to the Commissioner to show that (1) the claimant can make an adjustment to other work; and (2) specific jobs exist in the national economy which claimant can perform. *Batson v. Comm'r, Soc. Sec. Admin.*, 359 F.3d 1190, 1193-94 (9th 2004). If a claimant cannot make an adjustment to other work in the national economy, a finding of "disabled" is made. 20 C.F.R. §§ 404.1520(a)(4)(I-v), 416.920(a)(4)(I-v).

ADMINISTRATIVE DECISION

At step one, the ALJ determined that Plaintiff did not engage in substantial gainful activity since July 1, 2008.

At step two, the ALJ found that Plaintiff had the following severe impairments: scoliosis, degenerative joint disease of knees, right shoulder impingement syndrome, a provisional cognitive disorder, depressive disorder, antisocial personality disorder, and cannabis dependence (20 C.F.R. §§ 404.1520(c) & 416.920(c)).

At step three, the ALJ found that Plaintiff did not have an impairment or combination of impairments that met or medically equaled any of the listed impairments described at 20 C.F.R. Part 404, Subpart P, Appendix 1 (20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926).

1 At step four, the ALJ found that Plaintiff had the residual functional capacity (RFC)
2 to perform light work, subject to numerous physical and social limitations. The ALJ
3 concluded that Plaintiff was unable to perform any past relevant work.

4 At step five, the ALJ concluded that, given Plaintiff's age, education, work experience,
5 and RFC, there were jobs that existed in significant numbers in the national economy that
6 Plaintiff could perform, including work as a small parts assembler, photo copy machine
7 operator, or mail room clerk.

8 STANDARD OF REVIEW

9 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the court set out the
10 standard of review:

11 A district court's order upholding the Commissioner's denial of benefits is
12 reviewed *de novo*. *Harman v. Apfel*, 211 F.3d 1172, 1174 (9th Cir. 2000).
13 The decision of the Commissioner may be reversed only if it is not supported
14 by substantial evidence or if it is based on legal error. [*Tackett*, 180 F.3d at
15 1097]. Substantial evidence is defined as being more than a mere scintilla, but
16 less than a preponderance. *Id.* at 1098. Put another way, substantial evidence is
17 such relevant evidence as a reasonable mind might accept as adequate to
18 support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the
19 evidence is susceptible to more than one rational interpretation, the court may
20 not substitute its judgment for that of the Commissioner. *Tackett*, 180 F.3d at
21 1097; *Morgan v. Commissioner of Social Sec. Admin.* 169 F.3d 595, 599 (9th
22 Cir. 1999).

23 The ALJ is responsible for determining credibility, resolving conflicts in
24 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d
25 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de*
26 *nov*o, although deference is owed to a reasonable construction of the applicable
statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000).

It is the role of the trier of fact, not this court, to resolve conflicts in evidence.
Richardson, 402 U.S. at 400. If evidence supports more than one rational interpretation, the
court may not substitute its judgment for that of the Commissioner. *Tackett*, 180 F.3d at
1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). Nevertheless, a decision
supported by substantial evidence will still be set aside if the ALJ did not apply the proper

1 legal standards in weighing the evidence and making the decision. *Browner v. Secretary of*
 2 *Health and Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial evidence exists
 3 to support the administrative findings, or if conflicting evidence exists that will support a
 4 finding of either disability or non-disability, the Commissioner's determination is conclusive.
 5 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

6 ISSUES

7 1. In determining Plaintiff's RFC, did the ALJ err in rejecting the opinions of
 8 Plaintiff's examining psychologists concerning Plaintiff's mental impairments?

9 2. Does substantial evidence support the ALJ's conclusion that Plaintiff's mental
 10 impairments do not preclude him from working?

11 DISCUSSION

12 **1. In determining Plaintiff's RFC, did the ALJ err in rejecting the opinions of**
 13 **Plaintiff's examining psychologists concerning the extent of Plaintiff's mental**
 14 **impairments?**

15 Plaintiff argues that the ALJ did not properly consider the opinions of his examining
 16 psychologists. The Court disagrees.

17 In weighing medical source opinions, the Ninth Circuit distinguishes among three
 18 types of physicians: (1) treating physicians, who actually treat the claimant; (2) examining
 19 physicians, who examine but do not treat the claimant; and (3) non-examining physicians
 20 who neither treat nor examine the claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
 21 1995). The opinion of a treating physician is entitled to more weight than the opinion of an
 22 examining physician. *Id.* The opinion of an examining physician is entitled to greater weight
 23 than a nonexamining physician. *Id.*

24 An ALJ must review the entire medical record and cite valid reasons for rejecting a
 25 physician's opinion when determining Plaintiff's functional limitations. When an examining
 26 physician's opinion is uncontradicted by any other physician, the ALJ must "provide 'clear

1 and convincing' reasons for rejecting the . . . opinion of [the] examining physician." *Id.*
2 (quoting *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990). When the examining
3 physician's opinion is contradicted by another physician, the examining physician's opinion
4 can "only be rejected for specific and legitimate reasons that are supported by substantial
5 evidence in the record." *Id.* at 830-31 (citing *Andrews*, 53 F.3d at 1043).

6 In this case, Plaintiff provided records from three examining psychologists: John
7 Arnold, Ph.D., W. Scott Mabee, Ph.D., and Kathy Holmes, Ph.D. As Plaintiff points out,
8 these psychologists diagnosed Plaintiff with various psychiatric disorders and opined that the
9 disorders would likely affect his ability to work. The opinions of Drs. Arnold, Mabee, and
10 Holmes, however, are not entirely consistent with each other and do not equivocally establish
11 that Plaintiff's mental impairments preclude him from working. Furthermore, the opinion of
12 examining psychologist James Bailey, Ph.D. contradicts certain diagnoses made by Drs.
13 Arnold, Mabee, and Holmes. Dr. Bailey performed a psychiatric review of Plaintiff and
14 concluded that Plaintiff had two medically determinable impairments—"cognitive d/o NOS,
15 provisional" and "antisocial personality d/o"—but these impairments were not significant.
16 (Tr. at 295, 301.) Dr. Bailey concluded that Plaintiff had the RFC to "learn more complex
17 tasks with time" and that Plaintiff would benefit from "spoken instruction or working from
18 a list," working "away from large groups of coworkers or general public," and from "fair and
19 consistent supervision." (Tr. at 310.) To the extent that the ALJ gave little weight to Drs.
20 Arnold, Mabee, and Holmes' diagnoses, the ALJ was only required to provide "specific and
21 legitimate" reasons for doing so.

22 **a. Dr. Arnold**

23 Plaintiff argues that the ALJ erred by not giving greater weight to Dr. Arnold's
24 diagnoses of Plaintiff's psychological disorders and Dr. Arnold's opinion that Plaintiff's
25 impairments resulted in several moderate and marked limitations. It is true Dr. Arnold
26 diagnosed Plaintiff with cognitive disorder NOS (provisional) and antisocial personality

1 disorder. (Tr. at 272.) Regarding Plaintiff's cognitive and social factors, Dr. Arnold also
2 opined that Plaintiff's "personality features," "anger management problems," and "lack of
3 remorse/emotion" led to several "moderate" and "marked" limitations. (Tr. at 273.) The ALJ,
4 however, did not err in giving little weight to Dr. Arnold's diagnoses and opinions because
5 the ALJ provided specific and legitimate reasons for rejecting Dr. Arnold's opinions.

6 First, the ALJ noted that Dr. Arnold's diagnoses and assessment of Plaintiff's
7 limitations were not internally consistent. In the same report cited by the Plaintiff to support
8 his argument, Dr. Arnold opined that Plaintiff was capable of performing many tasks despite
9 his impairments. Specifically, Dr. Arnold stated, "[Plaintiff] can understand and carry out
10 simple instructions. If working independently he could carry out more complicated tasks if
11 he has a written list to follow. He would function best in positions that have minimal contact
12 with supervisors, co-workers, and the general public. He can rely on the bus for
13 transportation." (Tr. at 273.) Internal inconsistency is a legitimate reason to give little weight
14 to a medical opinion. *See Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005) (finding
15 that an ALJ may cite internal inconsistencies in evaluating a physician's opinion).

16 Second, the ALJ reasoned that Dr. Arnold's opinions were based on Plaintiff's self-
17 reporting and that Plaintiff had a tendency to over report his symptoms. Plaintiff does not
18 dispute the ALJ's finding that he was not credible. (Tr. at 26.) Concluding that a physician's
19 opinion is based on the self reporting of an incredible claimant is another legitimate reason
20 for rejecting the physician's opinion. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir.
21 2008) ("An ALJ may reject a treating physician's opinion if it is based to a large extent on
22 a claimant's self-reports that have been properly discounted as incredible.").

23 Third, the ALJ noted that Dr. Arnold's diagnoses were inconsistent with Plaintiff's
24 daily activities. As noted by the ALJ, during Plaintiff's period of alleged disability, he
25 was able to read books, watch movies and online shows, browse the internet, and
26 play with his daughter. (Tr. at 24.) Concluding that a claimant's daily activities are

1 inconsistent with a medical opinion is a legitimate reason for rejecting the opinion. *See*
2 *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) ("[I]f, despite his claims of pain, a
3 claimant is able to perform household chores and other activities that involve many of
4 the same physical tasks as a particular type of job, it would not be farfetched for an
5 ALJ to conclude that the claimant's pain does not prevent the claimant from working.").
6 Plaintiff points out that his fiancé performs most household chores, but this does not
7 prove that Plaintiff is mentally disabled. Plaintiff does not challenge the ALJ's findings
8 concerning his physical limitations. Plaintiff's ability to comprehend and follow books,
9 movies, and internet shows, and to navigate internet websites demonstrates an ability to
10 concentrate and process information that belie his claim of disabling mental impair-
11 ments.

12 Fourth, the ALJ gave little weight to Dr. Arnold's opinion because Dr. Arnold's
13 opinion did not take into account Plaintiff's marijuana use (presumably because Plaintiff did
14 not disclose his marijuana use to Dr. Arnold). The fact that Dr. Arnold failed to take into
15 account Plaintiff's history of substance abuse is another legitimate for giving less weight to
16 Dr. Arnold's opinions.

17 In sum, the ALJ provided specific and legitimate reasons for giving little weight to
18 Dr. Arnold's opinions.

19 **b. Dr. Mabee**

20 Plaintiff argues that the ALJ erred in rejecting Dr. Mabee's opinions. *See* ECF No. 17
21 at 16. The ALJ, however, did not reject all of Dr. Mabee's opinions. To the contrary, the ALJ
22 gave "significant weight" to the majority of Dr. Mabee's opinions, including Dr. Mabee's
23 observations that "[Plaintiff] is capable of understanding and carrying out simple
24 instructions. . . . He can work without close supervision and not disrupt others. He would
25 work best in positions that have minimal interaction with others. He can use the bus for
26 transportation." (Tr. at 317.) The only part of Dr. Mabee's opinion rejected by the ALJ was

1 Dr. Mabee's opinion that "[Plaintiff] can only concentrate for short periods of time." (Tr. at
2 317.)

3 The ALJ provided specific and legitimate reasons for rejecting Dr. Mabee's opinion
4 regarding Plaintiff's ability to concentrate. The ALJ noted that Dr. Mabee's opinion was
5 contradicted by both Plaintiff's daily activities and the "overall evidence of record." (Tr. at
6 28.) As discussed above, a claimant's performance of daily activities that contradict a medical
7 opinion provides a legitimate reason for rejecting the opinion. *Fair*, 885 F.2d at 603.
8 Furthermore, an ALJ may discredit medical opinions that are "conclusory, brief, and
9 unsupported by the record as a whole." *Batson*, 359 F.3d at 1195. As pointed out by
10 Defendant, "Dr. Mabee was the only medical source who thought Plaintiff could only
11 concentrate for short periods." ECF No. 18 at 8. Dr. Mabee's opinion regarding Plaintiff's
12 ability to concentrate was conclusory and unsupported by the record as a whole. The ALJ
13 applied the correct legal standards in weighing Dr. Mabee's opinions.

14 **c. Dr. Holmes**

15 Plaintiff briefly references Dr. Holmes' opinion in which she rated Plaintiff's Global
16 Assessment of Functioning (GAF) at 50 and provisionally diagnosed Plaintiff with
17 posttraumatic stress disorder, polysubstance abuse, antisocial personality disorder, and
18 borderline personality disorder. ECF No. 17 at 15 (citing Tr. at 432). Plaintiff provides no
19 additional argument concerning the ALJ's treatment of Dr. Holmes' opinions. In any case,
20 Dr. Holmes' opinions are wholly unhelpful to Plaintiff. In a thorough report, Dr. Holmes
21 detailed Plaintiff's history of personal relationships, substance abuse, and legal problems.
22 Dr. Holmes also observed that that Plaintiff had a "tendency to over-endorse symptoms" and
23 may have been "attempting to produce exaggerated or false memory symptoms." (Tr. at 431.)
24 In making her provisional diagnoses, Dr. Holmes again emphasized that Plaintiff "may be
25 intentionally producing or grossly exaggerating his reports of memory symptoms which
26 could be an attempt to avoid work and/or continue receiving disability benefits." (Tr. at 433.)

1 Although Plaintiff cites to Dr. Holmes' opinion in support of his argument that he "is more
2 limited from a psychological standpoint that what was determined by the [ALJ]" (ECF No.
3 17 at 13-14), the Court finds that Dr. Holmes' opinion does not support Plaintiff's argument.

4 **2. Does substantial evidence support the ALJ's conclusion that Plaintiff's mental**
5 **impairments do not preclude him from working?**

6 Substantial evidence supports the ALJ's conclusion that Plaintiff's mental impairments
7 do not preclude him from working. Both Dr. Arnold and Dr. Mabee concluded that Plaintiff
8 could carry out simple instructions and work without close supervision so long as he had
9 only minimal interaction with coworkers and the general public. (Tr. at 273, 317.) These
10 conclusions are consistent with the conclusion of Dr. Bailey who opined that Plaintiff could
11 "learn more complex tasks with time," and also noted that Plaintiff would benefit from
12 "spoken instruction or working from a list," "fair and consistent supervision," and working
13 "away from large groups of coworkers or general public." (Tr. at 310.) Plaintiff's argument
14 that he is "more limited from a psychological standpoint" is simply based on an alternative
15 reading of the evidence. (ECF No. 17 at 13.) The Court, however, "must uphold the ALJ's
16 findings if they are supported by inferences reasonably drawn from the record . . . [e]ven
17 when the evidence is susceptible to more than one rational interpretation." *Molina v. Astrue*,
18 674 F.3d 1104 (9th Cir. 2012). Plaintiff fails to prove that the ALJ's findings are not
19 supported by inferences reasonably drawn from the record. The Court finds that the ALJ's
20 decision is supported by substantial evidence.

21 **CONCLUSION**

22 Having reviewed the record and the ALJ's findings, the Court concludes the ALJ's
23 decision is supported by substantial evidence and is not based on legal error. Accordingly,

24 **IT IS ORDERED** that:

25 1. Defendant's Motion for Summary Judgment, filed April 15, 2013, **ECF No. 18**, is
26 **GRANTED**.

1 2. Plaintiff's Motion for Summary Judgment, filed February 27, 2013, **ECF No. 17**,
2 is **DENIED**.

3 The District Court Executive is directed to file this Order and provide copies to
4 counsel. Judgment shall be entered for Defendant and the file shall be **CLOSED**.

5 **DATED** this 3rd day of October, 2013.

6
7
8 10-01-13

s/ Wm. Fremming Nielsen

WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE